

TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
3564In Re Application Of: **WORGULL, K., ET AL**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/563,392	06/20/2007	HALL, C.	278	3742	1516

Invention: **HAND HAIR DRYER...**COMMISSIONER FOR PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

08/07/2009

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Claus Worgull
Serial No.: 10/563,392
Filed: 06/20/2007
Group Art Unit: 3743
Examiner: Corey John Hall
For: Hand Hair Dryer with Two Handle Grips

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
Board of Patent Appeals and Interference
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

This Appeal is from the Examiner's Final Office Action mailed from the U.S. Patent and Trademark Office 01 July 2009, finally rejecting claims 1-7 and 9-12.

A Notice of Appeal in response to the 01 July 2009 Final Office Action was filed on 07 August 2009. The requisite fee under 37 C.F.R. § 41.20(b)(2) for filing this Appeal Brief in the amount of \$540 is submitted with this Appeal Brief.

This Appeal Brief is filed within the two-month period prescribed by 37 C.F.R. § 41.37(a)(1), set to expire 07 October 2009. Accordingly, it is believed that no extension of time is required.

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I. REAL PARTY in INTEREST:

The real party in interest is Proctor & Gamble GmbH, the assignee of record.

II. RELATED APPEALS AND INTERFERENCES:

Appellants, Appellants' representative, and the Assignee are not aware of any prior or pending appeals, interferences, or judicial proceedings that may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in this pending appeal.

III. STATUS OF CLAIMS:

Claims 1-7 and 9-12 are pending in the application. Claim 8 is canceled. Claims 1, 5-7, and 9 are rejected under 35 U.S.C. 102 (b) as being anticipated by Thaler et al. (US 5,727,331). Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler in view of Wilson (US 4,629,864). Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thaler in view of Berryman (US 3,612,824). Appellants appeal the rejections of claims 1-7 and 9-12.

IV. STATUS OF AMENDMENTS:

There are no amendments that have not been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER:

The claimed subject matter defined in independent claim 1 includes reference to particular parts of the specification, in particular, page 5, line 8, to page 6, line 9, in the specification and Figures 5-9, reference elements 1-9, 16, 16.2, and 16.2. As such, the following description is exemplary and is not a surrender of other aspects of the present invention that are also enabled by the present specification and that are within the scope of the claims.

Independent claim 1 relates to a hand hair dryer comprising:

an electric fan for generating an airstream from a barrel portion;
an electric heater located in line with the electric fan;

wherein

the electric fan is located in a housing portion;
the electric heater is located in the barrel portion;
a first handle grip that has operator control elements is located on the housing portion at an angle of approximately 90° to the barrel portion;
the barrel portion is embodied as a second handle grip;
a commonly actuatable cold air combination switch is located between the first handle grip and second handle grip, and is configured to be actuated selectively from the first or second handle grip using one finger.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL:

Whether claim 1, 5-7, and 9 are unpatentable under 35 U.S.C. § 102(b) as being anticipated by Thaler (US 5,727,331).

Whether claims 2-4 are unpatentable under 35 U.S.C. 103(a) as being unpatentable over Thaler (US 5,727,331) in view of Wilson (US 4,629,864).

Whether claims 10-12 are unpatentable under 35 U.S.C. 103(a) as being unpatentable over Thaler (US 5,727,331) in view of Berryman (US 3,612,824).

VII. ARGUMENTS

A. Claim 1

Whether claim 1 is unpatentable under 35 U.S.C. § 102(b) as being anticipated by Thaler et al. (US 5,727,331).

“A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 Fed. Cir. 1987)

1. Thaler does not disclose a commonly actuatable cold air combination switch.

Claim 1 recites a switch that is “*commonly actuatable*.” One of ordinary skill in the art would reasonably interpret this, in the context of the claim, to mean that the switch is actuated commonly (in a common way) from both handle grips. One of ordinary skill in the art would understand that the switch is actuated in the same (common) manner from both handles using one finger. One of ordinary skill in the art would find confirmation of that the words recited in claim 1 are used with their plain meanings in paragraphs [0023-0025] and Figures 5-9 in the published application.

The rejection cites **Fig. 1** and lines 11-12 in the abstract as disclosing a commonly actuatable cold air combination switch **20** located between a first handle grip **11** and a second handle grip **10**.

Appellants respectfully submit that the Thaler does not disclose a commonly actuatable switch. The Examiner asserts that lines 11-12 in the abstract and reference element **20** in **Fig. 1** disclose a commonly actuatable cold

air combination switch. The abstract of the Thaler discloses a hair dryer including more than one switch and that the switches are located on different portions of the hair dryer, allowing the user to select air flow rates and temperature when gripping the dryer in different ways. A collar on the barrel of the hair dryer is mechanically linked to a pistol trigger switch on a pistol grip to provide a second switch. Lines 11-12 of the abstract, and the abstract as a whole, clearly disclose two separate switches located on two separate parts of a hair dryer that are mechanically linked and not a commonly actuatable switch. There is no mention in Thaler of a commonly actuatable switch or a commonly actuatable switch that can be selectively actuated by one finger from first and second handle grips.

Fig. 1 and its corresponding description also disclose two separate switches rather than a commonly actuatable switch. In the description of **Fig. 1**, Thaler discloses a spring biased trigger **20** that is activated when moved in the direction of arrow **61** and which, when released, returns to the position shown in **Fig. 1**. The trigger **20** is located so that it can be moved in the direction of arrow **61** with one finger when holding the dryer **30** by the handle **11** (column 3, lines 50-59).

Thaler further discloses that a collar **21**, pivot shafts **22** and **32**, and the trigger **20** are configured and positioned so that moving the top of the collar **18** toward a diffuser **14** will rotate the collar **21** about the pivot shafts **22** and **32**. The bottom of the collar **21** includes lip **34** to move in the direction of the arrow **61**, pushing the trigger **20**. The bottom portion of the barrel **37** engages and prevents the collar **21** from rotating the collar lip **34** away from the trigger **20** (column 3, lines 7-19). Thaler in column 3, lines 47-49, discloses that “**the collar arm 23 becomes a second switch by which the user can control the air flow or temperature of the hair dryer.**”

Thaler clearly discloses that trigger switch **20** is not a commonly actuatable switch. Spring biased trigger switch **20** can be actuated by a single finger from handle **11** by continuous pressure by the finger in the direction of arrow **61** but cannot be activated in this way from grip **10**. To actuate trigger switch **20** from the barrel grip, a second switch located on the barrel is required. Thaler discloses two distinct switches that are mechanically coupled. One of ordinary skill in the art would not confuse this with a commonly actuatable switch as recited in the rejected claim. The recitation in present claim 1 does not exclude the presence of more than one switch on the presently claimed hair dryer, but it is clear that the invention recited in claim 1 comprises a commonly actuatable cold air combination switch located between first and second handle grips and configured to be actuated selectively from the first or second handle grip using one finger. Thaler does not disclose a commonly actuatable cold air combination switch located between first and second handle grips but rather two separate, mechanically linked switches.

Any argument that the mechanically linked second and first switches disclosed by Thaler anticipates “*a commonly actuatable cold air combination switch*” contradicts the ordinary and customary meaning of “*commonly actuatable switch*” as described hereinabove. The ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d at 1314, 75 USPQ2d at 1327; *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003). The words of the claim must be given their plain meaning unless the meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004).

Any argument that the term “*actuatable*” encompasses indirect actuation a first switch by the actuation of a second switch mechanically coupled to the first switch and based upon alternate definitions of “*actuate*” contradicts the meaning of the word in the context of present claim 1 and the supporting specification. If more than one definition might apply in the context of a claim, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with applicant’s use of the terms. *Brookhill-Wilk* 1, 334 F. 3d at 1300, 67 USPQ2d at 1137; *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998); *Vitronics Corp. v. Conceptronic Inc.*, 90 F.3d 1576, 1583, 39 USPQ2d 1573, 1577 (Fed. Cir. 1996).

2. Thaler does not disclose a cold air combination switch located between first and second handle grips.

Claim 1 recites the limitation of a commonly actuatable cold air combination switch located between first and second handle grips. The plain meaning of this limitation is that the commonly actuatable cold air combination switch is not located on either handle grip but between them, as shown in Figs. 6-9 of the published application.

The rejection of claim 1 asserts that **Fig. 1** in Thaler discloses a commonly actuatable cold air combination switch located between first and second handle grips. Visual inspection of **Fig. 1**, however, shows that trigger switch **20** is located on the handle grip **11** and not between handle grip **11** and barrel grip **10**. The location of trigger **20** on the handle **11** is confirmed by the Thaler specification in column 2 at line 50, which described **Fig. 1** and reads “*spring based trigger 20 is located on the handle 11.*”

3. Thaler does not disclose a commonly actuatable cold air combination switch configured to be actuated selectively from the first or second handle grip using one finger.

Present claim 1 recites a cold air switch that is “*commonly actuatable*” and configured to be “*actuated selectively (...) using one finger*.” The phrase “*using one finger*” recited in claim 1 has the ordinary and customary meaning of using one finger. One of ordinary skill in the art would, for example, not interpret “*using one finger*” as equivalent to “*using one finger and a lever*” or “*using one finger and a spring*.”

The Examiner asserts that **Fig. 1** discloses a switch **20** that is actuatable from a first handle grip **11** using one finger, and that **Fig. 4** discloses that the switch **20** is actuatable from a second handle grip **10** using one finger **27**.

Trigger switch **20** is actuated by one finger when the dryer is held by the handle according to column 2, lines 57-59 in Thaler. The alternate method for actuating the trigger on the handle of the dryer disclosed by Thaler is to rotate a collar **21** having a lip **34** that depresses the trigger (column 3, lines 7-19). This mechanism is clearly identified by Thaler in column 3, lines 47-49, as a second switch. Thaler’s description of **Fig. 4** in column 3, lines 58-63, discloses that a single finger **27** can move a collar arm **23**, including the collar arm distal end **24** and that this movement rotates the collar **21** about the pivot shafts **22** to activate the trigger. This is not equivalent to actuating trigger switch **20** with one finger because it requires a mechanism in addition to the finger to actuate trigger **20**.

Appellants respectfully submit that the Examiner has erred by interpreting the phrase “*using one finger*” recited in claim 1 to mean “*using one finger and a lever*.” Any argument that using one finger **27** to move a collar arm **23** and, via levers, to actuate trigger switch **20** anticipates “*a commonly actuatable cold air combination switch (...) configured to be actuated selectively from the first or*

second handle grip (...) using one finger" contradicts the ordinary and customary meaning of "*actuatable using one finger*." The ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d at 1314, 75 USPQ2d at 1327; *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003)). The words of the claim must be given their plain meaning unless the meaning is inconsistent with the specification (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004)).

Any argument that the term "*actuatable using one finger*" encompasses indirect actuation of trigger switch **20** via a lever mechanism by moving a collar arm **23** contradicts the meaning of the term in context of present claim 1. If more than one definition might apply in the context of a claim, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with applicant's use of the terms. *Brookhill-Wilk 1*, 334 F. 3d at 1300, 67 USPQ2d at 1137; *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998); *Vitronics Corp. v. Conceptronic Inc.*, 90 F.3d 1576, 1583, 39 USPQ2d 1573, 1577 (Fed. Cir.1996).

4. Thaler does not disclose a commonly actuatable cold air combination switch (16, 16.1, 16.2) is located between the first handle grip (8) and the second handle grip (9), and is configured to be actuated selectively from the first or second handle grip 8, 9, using one finger.

The rejection cites **Fig. 1** and lines 11-12 in the abstract as disclosing a commonly actuatable cold air combination switch **20** located between a first handle grip **11** and a second handle grip **10**. The rejection also asserts that **Fig. 1**

discloses a switch **20** that is actuatable from a first handle grip **11** using one finger, and that **Fig. 4** discloses that the switch **20** is actuatable from a second handle grip **10** using one finger **27**.

Appellants respectfully submit that, for the reasons provided in sections 1-3 above, Thaler does not disclose a commonly actuatable cold air combination switch (16, 16.1, 16.2) is located between the first handle grip (8) and the second handle grip (9), and is configured to be actuated selectively from the first or second handle grip 8, 9, using one finger.

Additionally, Appellants argue that the Examiner has interpreted the Thaler patent in a way that is directly contradicted by Thaler. In the Background, Thaler discloses that hair dryers having a single trigger on a pistol grip suffer from the disadvantage of not allowing the user to control the air flow rate and temperature when the hair dryer is held in different positions such as by the handle or barrel (column 1, lines 33-42). The summary of the invention in column 1, lines 44-53, discloses that Thaler overcomes this disadvantage by providing a hair dryer with two switches. The two switches may comprise one electrical switch on the pistol grip mechanically coupled to a mechanical switch on the barrel (column 1, lines 53-60; claim 2). The two switches may also comprise a first electrical switch on the pistol grip and a second electrical switch located on the barrel (column 1, lines 61-65; claim 1). Thaler does not disclose any commonly actuatable switch that is configured to be actuated by one finger of a hand holding the dryer by a grip on the handle or a grip on the barrel.

If, hypothetically, present claim 1 were rejected as being unpatentable under 35 U.S.C. 103(a) over Thaler, Appellants would respectfully submit that Thaler does not teach or suggest a commonly actuatable cold air combination switch (16, 16.1, 16.2) is located between the first handle grip (8) and the second handle grip (9), and is configured to be actuated selectively from the first or

second handle grip 8, 9, using one finger for the reasons provided in arguments 1-4 above.

Additionally, Thaler teaches that hair dryers having a single trigger on a pistol grip suffer from the disadvantage of not allowing the user to control the air flow rate and temperature when the hair dryer is held in different positions such as by the handle or barrel. Thaler overcomes this disadvantage by providing a hair dryer with two switches, both of which are located on the grips by which the dryer is held and actuated only by a finger on the hand that holds the grip on which the switch is located.

Appellants have chosen a course that is distinct and away from the teachings of Thaler because Appellants have placed a switch between the two grips and thereby eliminating the need for separate switches, one on each handle grip. Where Thaler teaches solving the problem of ergonomics by providing an additional switch, Appellants have claimed a dryer in which the location of the switch eliminates the need for two switches.

In view of the foregoing, Appellants respectfully submit that present claim 1 is patentable over Thaler under 35 U.S.C. 102(b) and that the rejection of claim 1 be withdrawn. Also in view of the foregoing, Appellants respectfully submit that present claim 1 is patentable over Thaler 35 U.S.C. 103(a).

B. Claims 2-4

Whether claims 2-4 are unpatentable under 35 U.S.C. § 103(a) as being unpatentable over Thaler et al. (US 5,727,331) in view of Wilson (US 4,629,864).

Appellants note that claims 2-4 depend from and include the limitations recited in claim 1, which is rejected under 35 U.S.C. 102(b) as being anticipated by Thaler.

The rejection of claims 2-4 cites Thaler as disclosing the claimed invention except for the limitation that the second handle grip is heat insulated, the barrel portion is heat insulated from the outside, and the second handle grip and the barrel portion are embodied as heat insulated from the outside.

For the reasons provided in the arguments against the rejection of claim 1 under 35 U.S.C. 102(b) and a hypothetical rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over Thaler, Appellants respectfully submit that Thaler does not disclose, teach or suggest a commonly actuatable cold air combination switch (16, 16.1, 16.2) is located between the first handle grip (8) and the second handle grip (9), and is configured to be actuated selectively from the first or second handle grip 8, 9, using one finger.

Additionally, Appellants respectfully submit that one of ordinary skill in the art would have had no motivation to modify the Thaler hair dryer to insulate the barrel, barrel portion, or barrel handle grip. The rejection asserts that it would have been obvious to so insulate the Thaler hair dryer according to Wilson for the purpose of making the barrel much cooler for an operator to touch. This assertion appears to be based on an unsupported assumption that the barrel of the Thaler hair dryer is uncomfortably warm for an operator to touch. Fig. 4 in Thaler clearly shows an operator holding the hair dryer while in operation and the disclosure makes no reference whatsoever that could indicate a need to cool the barrel for any reason. The heat gun taught by Wilson is designed to strip paint, which requires temperatures far above those used to safely dry hair. Consequently, one of ordinary skill in the art reading both Thaler and Wilson would have no reason to modify Thaler by insulating the barrel.

Appellants respectfully submit that the rejection of claims 2-4 under 35 U.S.C. § 103(a) should be withdrawn.

C. Claim 5

The rejection of claim 5 under 35 U.S.C. § 102(b) as allegedly being anticipated by Thaler et al. (US 5,727,331) the decision of the Examiner to finally reject this claim should be reversed, and the application should be remanded to the Examiner.

Appellants note that claim 5 depends from and includes the limitations recited in claim 1. Therefore, the rejection of claim 5 is without appropriate basis for at least the reasons set forth by Appellants with respect to claim 1.

Appellants respectfully submit that the rejection of claim 5 under 35 U.S.C. § 102(b) should be withdrawn.

D. Claim 6

The rejection of claim 6 under 35 U.S.C. § 102(b) as allegedly being anticipated by Thaler et al. (US 5,727,331), the decision of the Examiner to finally reject this claim should be reversed, and the application should be remanded to the Examiner.

Appellants note that claim 6 depends from and includes the limitations recited in claim 1. Therefore, the rejection of claim 6 is without appropriate basis for at least the reasons set forth by Appellants with respect to claim 1.

Additionally, the rejection of claim 6 cites **Fig. 1**, reference elements **12** and **23** as disclosing a first handle grip **11** and second handle grip **10** each provided with a nonslip surface. Appellants respectfully submit that the Examiner errs in the interpretation of **Fig. 1** because reference element **12** is identified as a power switch in column 2 at lines 41-42 and reference element **23** is identified as a collar arm in column 3 at lines 20, 23, 24, 26, and 28.

The phrase “*provided with a nonslip surface*” would, in the context of the claim, be understood by those of ordinary skill in the art to mean that a grip is provided with a surface that has the property of preventing slipping when the hair dryer is held by the grip. A nonslip surface is not an inherent property of a power switch or a collar arm. Furthermore, a power switch **12** is not a grip and does not provide a grip **11** with a nonslip surface. Similarly, the collar arm **23** does not inherently provide grip **10** with a nonslip surface.

Appellants respectfully submit that the rejection of claim 6 under 35 U.S.C. § 102(b) should be withdrawn.

E. Claim 7

The rejection of claim 7 under 35 U.S.C. § 102(b) as allegedly being anticipated by Thaler et al. (US 5,727,331), the decision of the Examiner to finally reject this claim should be reversed, and the application should be remanded to the Examiner.

Appellants note that claim 7 depends from and includes the limitations recited in claim 1. Therefore, the rejection of claim 7 is without appropriate basis for at least the reasons set forth by Appellants with respect to claim 1.

Appellants respectfully submit that the rejection of claim 7 under 35 U.S.C. § 102(b) should be withdrawn.

F. Claim 9

The rejection of claim 9 under 35 U.S.C. § 102(b) as allegedly being anticipated by Thaler et al. (US 5,727,331), the decision of the Examiner to finally reject this claim should be reversed, and the application should be remanded to the Examiner.

Appellants note that claim 9 depends from and includes the limitations recited in claim 1. Therefore, the rejection of claim 9 is without appropriate basis for at least the reasons set forth by Appellants with respect to claim 1.

Appellants respectfully submit that the rejection of claim 9 under 35 U.S.C. § 102(b) should be withdrawn.

G. Claims 10 and 11

Whether claims 10 and 11 are unpatentable under 35 U.S.C. § 103(a) as being unpatentable over Thaler et al. (US 5,727,331) in view of Berryman (US 3,612824).

Appellants note that claims 10 and 11 depend from and include the limitations recited in claim 1, which is rejected under 35 U.S.C. 102(b) as being anticipated by Thaler.

For the reasons provided in the arguments against the rejection of claim 1 under 35 U.S.C. 102(b) and a hypothetical rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over Thaler, Appellants respectfully submit that Thaler does not disclose, teach or suggest a commonly actuatable cold air combination switch (16, 16.1, 16.2) is located between the first handle grip (8) and the second handle grip (9), and is configured to be actuated selectively from the first or second handle grip 8, 9, using one finger.

Additionally, Appellants argue that one of ordinary skill would have had no motivation to replace the spring biased trigger **20** in Thaler's hair dryer with a toggle switch because doing so would render the Thaler hair dryer inoperable for its intended purpose.

Thaler discloses that a collar **21**, pivot shafts **22** and **32**, and the trigger **20** are configured and positioned so that moving the top of the collar **18** toward a diffuser **14** will rotate the collar **21** about the pivot shafts **22** and **32**. The bottom of the collar **21** includes lip **34** to move in the direction of the arrow **61**, pushing the trigger **20**. The bottom portion of the barrel **37** engages and prevents the collar **21** from rotating the collar lip **34** away from the trigger **20** (column 3, lines 7-19). If one were to replace the spring biased trigger switch with a conventional toggle switch according to Berryman, lip **34** would move the toggle switch in the direction of arrow **61** but, not being spring-biased, the toggle switch would not return to the position shown in Fig. 1. As a consequence, the airflow temperature could not be controlled from a hand on either grip.

Appellants respectfully submit that the rejection of claims 10 and 11 under 35 U.S.C. § 103(a) should be withdrawn.

H. Claim 12

Whether claim 12 is unpatentable under 35 U.S.C. § 103(a) as being unpatentable over Thaler et al. (US 5,727,331) in view of Berryman (US 3,612824).

Appellants note that claim 12 depends from and includes the limitations recited in claim 1, which is rejected under 35 U.S.C. 102(b) as being anticipated by Thaler.

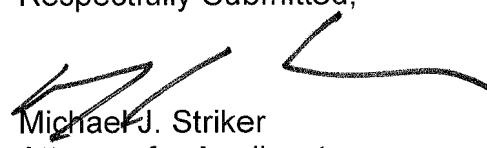
For the reasons provided in the arguments against the rejection of claim 1 under 35 U.S.C. 102(b) and a hypothetical rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over Thaler, Appellants respectfully submit that Thaler does not disclose, teach or suggest a commonly actuatable cold air combination switch (16, 16.1, 16.2) is located between the first handle grip (8) and the second handle grip (9), and is configured to be actuated selectively from the first or second handle grip 8, 9, using one finger.

Appellants respectfully submit that the rejection of claim 12 under 35 U.S.C. § 103(a) should be withdrawn.

VIII. CONCLUSION

Appellants respectfully submit that, for at least the foregoing reasons, the Examiner has failed to establish a prima facie case that the Thaler patent discloses all of the limitations recited in any of claims 1-7 and 9-12, which is a prerequisite for maintaining a rejection under 35 U.S.C. § 102(b) and that the Examiner has failed to establish a prima facie case of obviousness for the subject matter of any of claims 1-7 and 9-12, which is a prerequisite for maintaining a rejection under 35 U.S.C. § 103(a). The Board is, therefore, respectfully requested to reverse the Examiner's rejections of claims 1-7 and 9-12, and to allow the application to issue in its present form.

Respectfully Submitted,


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IX. CLAIMS APPENDIX

1. A hand hair dryer (1) comprising: an electric fan (2) and an electric heater (3), located in line with the electric fan for generating an air stream (4) from a barrel portion (5), in which the fan (2) is located in a housing portion (6) and the heater (3) is located inside the barrel portion (5), that on the housing portion (6), a first handle grip (8) that has operator control elements (7) is located at an angle of approximately 90° to the barrel portion (5), wherein

the barrel portion (5) is embodied as a second handle grip (9) and
a commonly actuatable cold air combination switch (16, 16.1, 16.2) is located between the first handle grip (8) and the second handle grip (9), and is configured to be actuated selectively from the first or second handle grip 8, 9, using one finger.
2. The hand hair dryer in accordance with claim 1, wherein the second handle grip (9) is heat-insulated.
3. The hand hair dryer in accordance with claim 1, wherein the barrel portion (5) is heat-insulated from the outside.
4. The hand hair dryer in accordance with claim 1, wherein the second handle grip (9) and the barrel portion (5) are embodied as heat-insulated from the outside.
5. The hand hair dryer in accordance with claim 1, wherein the second handle grip (9) is shaped cylindrically.
6. The hand hair dryer in accordance with claim 1, wherein the first and second handle grips (8, 9) are each provided with a nonslip surface (13).

7. The hand hair dryer in accordance with claim 1, wherein a first cold air switch (10) is located on the first handle grip (8), and a second cold air switch (11) is located on the second handle grip (9).

8. (canceled)

9. The hand hair dryer in accordance with claim 1, wherein a pushbutton (17) is provided as the cold air combination switch (16).

10. (currently amended) The hand hair dryer in accordance with claim 1, wherein a one-legged toggle switch (18) is provided as the cold air combination switch (16.1).

11. (currently amended) The hand hair dryer in accordance with claim 1, wherein two-legged toggle switch (19) is provided as the cold air combination switch (16.2).

12. (currently amended) The hand hair dryer in accordance with claim 1, wherein a centrally located warm-air conduit (28) and a coaxial cold-air conduit (29) are provided in the barrel portion (5), and the central warm-air conduit (28) is formed by a hollow-cylindrical barrel (30), in which the heater (3) is located; that the coaxial cold-air conduit (29) is formed by the barrel portion (5) and the central warm-air conduit (28); that the central warm-air conduit (28) and the coaxial cold-air conduit (29) are acted upon by a cold air stream (31) of the fan (2), and by means of the heater (3), a warm air stream outlet (32) is effected out of the central warm-air conduit (28), and a cold air stream (33) is effected from the coaxial cold-air conduit (29).

X. EVIDENCE APPENDIX

None

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XI. RELATED PROCEEDINGS APPENDIX

None